

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LLEWELLYN ANGELO WILLIAMS,

Plaintiff,

-against-

**AFFIDAVIT
IN OPPOSITION**

13-CV-3315 (NSR)(JCM)
ECF CASE

THE CITY OF NEW ROCHELLE,
THE CITY OF NEW ROCHELLE POLICE DEPARTMENT,
SERGEANT DANIEL CONCA,
SERGEANT JOHN INZEO,
SERGEANT WILSON,
POLICE OFFICER ADAM CASTIGLIA,
POLICE OFFICER EDWARD SILLER,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

BRIAN J. POWERS, being duly sworn, deposes and says:

1. I am a Deputy Corporation Counsel in the office of KATHLEEN E. GILL, Corporation Counsel for the City of New Rochelle, attorney for Defendants CITY OF NEW ROCHELLE i/s/h/a THE CITY OF NEW ROCHELLE and THE CITY OF NEW ROCHELLE POLICE DEPARTMENT, and SERGEANT DANIEL CONCA, SERGEANT JOHN INZEO, SERGEANT KYLE WILSON, POLICE OFFICER ADAM CASTIGLIA and POLICE OFFICER EDWARD SILLER.

2. This affidavit is submitted in opposition to the Plaintiff's letter application in which he seeks leave of the Court to file a Supplemental Sixth Amended Complaint in this matter. As is more fully set forth below, the Defendants oppose the current application.

3. Mr. Smith has presented three different versions of Plaintiff's "Supplemental Sixth Amended Complaint". The first version of the "Supplemental Sixth Amended Complaint" was the one which Mr. Smith handed to me in Magistrate Judge McCarthy's courtroom on July 30, 2015, which I will refer to as "SSAC-1". The next version of the "Supplemental Sixth Amended Complaint" (which I will refer to as "SSAC-2") is the one Mr. Smith attempted to file and is referenced as document 71 of the ECF filings for this matter. Finally, the "Supplemental Sixth Amended Complaint" (which I will refer to as "SSAC-3") is the one which accompanied Mr. Smith's September 6, 2015 letter application requesting leave to file and serve such.

4. As the Court already has "SSAC-2" since it is ECF filing 71 and has "SSAC-3" as it is the subject of Plaintiff's current application, I will only enclose a copy of "SSAC-1", without exhibits, for the Court's reference. That document is annexed hereto as Exhibit "A". I will try to explain what the differences are among the three.

5. Both "SSAC-1" and "SSAC-3" contain news facts and claims but do not add new parties. In contrast, "SSAC-2" sought to add three new named defendants, namely Captain Kevin Kealy, Lieutenant George Marshall and Lieutenant Gary Robinson. No explanation has been given by plaintiff's counsel as to why these three potential new defendants were not part of "SSAC-1", then added as part of "SSAC-2", then deleted from "SSAC-3".

6. Indeed, in his request to Magistrate McCarthy seeking leave with respect to "SSAC-2", Mr. Smith's August 13 letter to the Court advised that the Plaintiff was seeking leave "to amend its pleading to add Captain Kevin Kealy as a named defendant", seeking "to supplement the pleading to add Lieutenant Gary Robinson as a named defendant", and finally "to amend and supplement its pleading to add lieutenant George Marshall as a named defendant." (Underlining in

the original letter.). Plaintiff is apparently abandoning his request to add these three new parties but still wants to supplement concerning items now set forth in "SSAC-3".

7. Turning to the substantive changes sought, the latest proposed complaint, that being the "Supplemental Sixth Amended Complaint", adds a series of totally new allegations than the last prior complaint in effect, that being the Fifth Amended Complaint. Specifically, paragraphs 22, 23, 24, 25 and 26 are completely new in "SSAC-3". In addition, in the "Supplemental Sixth Amended Complaint", plaintiff adds new materials to paragraphs 10, 13, 15, 16, 17, 18, 20, 21 and 27.

8. The additional items included in 10, 13, 15, 16, 17, 18, 20, 21 and 27 of the proposed the "Supplemental Sixth Amended Complaint" complain about such things as the following: paperwork not being filed in Surrogate's Court with respect to plaintiff's mother's automobile (paragraph 18), which has nothing to do with these Defendants; the plaintiff's admitted illegal booting of that same car in a private lot he was not authorized to boot on (paragraph 20); and that he was improperly ticketed for admittedly improper signs plaintiff had at the CVS lot for which he did not have a written agreement as required by City Code 316-3.1(F) (paragraphs 21-22).

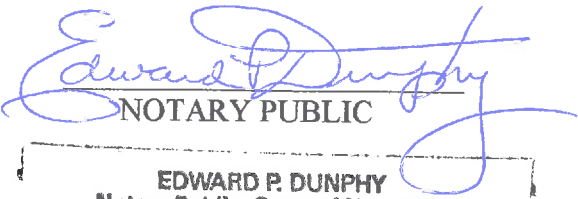
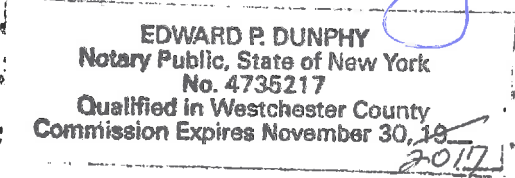
9. It is respectfully requested that should the Court, in its discretion, grant Plaintiff's request for leave to file and serve this third version of his "Supplemental Sixth Amended Complaint", that the Defendants be given the opportunity to conduct discovery on any of the new items in this latest complaint. I anticipate that this would include a further deposition of Mr. Williams along with that of his associate, Mr. Wheeler, and whatever additional document discovery is warranted by these newly added claims.

WHEREFORE, your deponent respectfully requests that the letter motion for an order seeking leave of the Court to file a Supplemental Sixth Amended Complaint should be denied. In

the event that the Court grants Plaintiff's application and plaintiff is given leave to amend, it is respectfully requested that the Defendants be allowed to conduct further discovery on the new and additional items set forth in the "Supplemental Sixth Amended Complaint", including a further deposition of the plaintiff and other potential witnesses, and some limited document production, along with such other relief as this Court deems just and proper.


BRIAN J. POWERS (BP-1992)

Sworn to before me this
28th day of September, 2015


NOTARY PUBLIC


UNITED STATES DISTRICT COURT
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Plaintiff,

-against-

THE CITY OF NEW ROCHELLE,
THE CITY OF NEW ROCHELLE POLICE DEPARTMENT,
SERGEANT DANIEL CONCA,
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POLICE OFFICER ADAM CASTIGLIA,
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Defendants.

AFFIDAVIT IN OPPOSITION

**KATHLEEN E. GILL
CORPORATION COUNSEL
Attorney for Defendants
CITY OF NEW ROCHELLE
i/s/h/a THE CITY OF NEW ROCHELLE and
THE CITY OF NEW ROCHELLE POLICE DEPARTMENT,
SERGEANT DANIEL CONCA, SERGEANT JOHN INZEO,
SERGEANT KYLE WILSON, POLICE OFFICER ADAM CASTIGLIA
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